UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID LENT,

Plaintiff,

-vs-

Case No.: 06 CV 0569 S(F)

SIGNATURE TRUCK SYSTEMS, INC., MUNCIE POWER PRODUCTS, INC., and BASE ENGINEERING, INC.

Defendants.

NOTICE OF MOTION

SIGNATURE TRUCK SYSTEMS, INC., MUNCIE POWER PRODUCTS, INC., and BASE ENGINEERING, INC.,

Third-Party Plaintiff,

-vs-

FERRELLGAS INC.,

Third-Party Defendant.

NATURE OF ACTION:	Personal Injury.
MOVING PARTY:	Plaintiff, David Lent.
DIRECTED TO:	All Parties.
DATE AND TIME:	To be determined by the Court.
PLACE:	U.S. Courthouse 68 Court Street Buffalo, New York.
SUPPORTING PAPERS:	Affirmation of Benjamin J. Andrews Esq., affirmed November 13, 2009, as well as the pleadings and other

papers filed in this action.

ANSWERING PAPERS: Opposing papers, if any, are required to be filed and served at least eight (8) business days prior to the return date of this motion, in accordance with Local Rule 7.1 (c).

RELIEF REQUESTED; An order granting plaintiff leave to take additional depositions beyond Rule 30's default limit of ten (10).

GROUNDS FOR RELIEF REQUESTED: Federal Rules of Civil Procedure 30(a)(1) & (2).

ORAL ARGUMENT: Requested.

DATED: November 13, 2009
Buffalo, New York

s/ Benjamin J. Andrews
Benjamin J. Andrews
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID LENT,

Plaintiff,

-vs-

Docket No: 06 CV 0569 S(F)

**SIGNATURE TRUCK SYSTEMS, INC.,
MUNCIE POWER PRODUCTS, INC., and
BASE ENGINEERING, INC.,**

Defendants.

AFFIRMATION IN SUPPORT

**SIGNATURE TRUCK SYSTEMS, INC.,
MUNCIE POWER PRODUCTS, INC., and
BASE ENGINEERING, INC.,**

Third-Party Plaintiffs,

-vs-

FERRELLGAS PARTNERS, L.P.

Third-Party Defendant.

Benjamin J. Andrews, an attorney at law, duly authorized to practice law in the United States District Court, Western District of New York and the Courts of the State of New York, hereby affirms under the penalty of perjury:

1. I am a partner in the law firm of Andrews, Bernstein & Maranto, LLP, attorneys for plaintiff, David Lent, in the above-entitled action. As such, I am fully familiar with the facts and circumstances set forth herein.

2. I submit this affirmation in support of plaintiff David Lent's motion for an order

granting leave to take additional depositions beyond Rule 30's default limit of ten (10).

PRELIMINARY STATEMENT

3. The preceding history of this case will not be repeated herein as this Court is well-aware of same from prior pleadings, motions and proceedings.

4. Following a motion by plaintiff, on or about October 14, 2009 this Court issued a Fourth Amended Scheduling Order, which, *inter alia*, extended the deadline for all fact discovery to be completed to December 31, 2009.

5. Prior to the expiration of this rapidly approaching deadline, plaintiff still needs to conduct five additional depositions. Specifically, plaintiff has issued subpoenas to take the non-party depositions of Jason Swatek, Product Manager for Chelsea PTO's; Brian Rang, Chief Engineer for Chelsea PTO's; Chief Legal Officer, Parker Hannefin Chelsea Division; and Risk Manager, Parker Hannefin Chelsea Division. In addition, plaintiff is in the process of issuing a subpoena to Richard Fernandez, engineer and former Muncie employee.

6. The default limit under Fed. R. Civ. P. 30(a)(1) & (2) is ten (10) depositions, which the parties have already exceeded. Plaintiff, therefore, seeks leave to conduct, beyond the ten provided by Rule 30, the depositions of the above individuals, whose testimony is necessary for plaintiff to adequately prepare his case.

ARGUMENT

I. APPLICABLE LEGAL STANDARDS

7. Fed. R. Civ. Proc. 30(a)(2)(A)(i) sets the default limit on the number of depositions a party may take at ten. However, "[l]eave to take additional depositions should be granted when consistent with the principles of Rule 26(b)(2)."

8. The Notes of the Advisory Committee (1993) to Fed. R. Civ. P. 30 Rule 26(b) allows

the court to put limits on discovery in order to "maintain a 'tighter rein' on the extent of discovery and to minimize the potential cost of [w]ide ranging discovery." Rx USA Wholesale, Inc. v. McKesson Corp., 2007 WL 1827335, at *2-3 (E.D.N.Y. June 25, 2007) (quoting Whittingham v. Amherst Coll., 163 F.R.D. 170, 171-172 (D. Mass. 1995)). The limits, however, are not intended to prevent necessary discovery, and courts have "broad [] discretion" to allow additional discovery based on the complexity of the case at hand. See Notes of the Advisory Committee (1993) to Fed. R. Civ. P. 26(b) & 30. Indeed, Rule 30 provides that "the court ***must*** grant leave [to take additional depositions] to the extent consistent with Rule 26(b)(2)." Fed. R. Civ. P. 30(a)(2) (emphasis added).

9. Courts have found additional depositions warranted in complex disputes involving large damages claims. See, e.g., Rx USA, 2007 WL 1827335, at *2-3 (granting leave to take additional depositions because, in part, "[t]his is not a 'simple' breach of contract/specific performance case").

II. PLAINTIFF SHOULD BE GRANTED LEAVE

Plaintiff's Claims Are Complex And The Non-Party Depositions Are Warranted.

10. As the Court is aware, this is a complicated case involving three separate product liability claims against three corporate entities. Given the breadth of plaintiff's claims, he must exceed the ten deposition limit to gather information sufficient to properly prepare his case.

11. When a deponent possesses unique information, courts generally grant leave for additional depositions because they do not undermine the key purpose of the limits – preventing duplicative discovery. See, e.g., Bromgard v. Montana, 2007 WL 1101179, at *1-2 (D. Mont. April 11, 2007) (granting leave for additional depositions in part because each proposed deponent "has information or opinions bearing in a unique way on some issue or issues involved in the case").

12. Here, the testimony of the five additional individuals plaintiff seeks to depose will yield important information central to the prosecution of plaintiff's claims and would not result in duplicative discovery.

13. The depositions of Jason Swatek, Product Manager for Chelsea PTO's; Brian Rang, Chief Engineer for Chelsea PTO's; the Chief Legal Officer for Parker Hannefin, Chelsea Division; and the Risk Manager for Parker Hannefin Chelsea Division are material and necessary to show:

- That Chelsea, a company in competition with Muncie, designed, manufactured, and marketed a PTO virtually identical to the Muncie PTO, but unlike Muncie, had explicit warnings in its installation and owners' manuals, as well as its general information catalogs regarding the dangers associated with unwanted shaft rotation and the necessity of guarding exposed PTO shafts. It is expected that this testimony will support plaintiff's claim that Muncie's warnings were inadequate and plaintiff's claim that the exposed PTO shaft should have been guarded;

- That Chelsea had conducted testing on a PTO virtually identical to the Muncie PTO which established that the PTO was subject to unwanted shaft rotation after the PTO was disengaged and that unwanted shaft rotation generated sufficient torque to cause serious injury and even death if an individual became caught on an exposed auxiliary shaft attached to the PTO. It is expected that this testimony will contradict Muncie's position that unwanted shaft rotation does not produce sufficient torque to cause serious injury or death;

- That prior to 2001, Chelsea was aware of numerous instances where individuals suffered serious injuries or death from unguarded PTO shafts connected to PTOs virtually identical to the Muncie designed and manufactured PTO installed on trucks. Muncie and Signature deny being aware of numerous serious injuries or death resulting from unguarded PTO shafts attached to PTOs like the Muncie PTO;
- That Chelsea's warning decals conformed to safety standards, unlike Muncie's warning decals, which did not.

14. Additionally, plaintiff wishes to depose Richard Fernandez, an engineer formerly employed by Muncie who is now an engineer with Braden Carco Germatic Winch Division.

15. It is expected that Mr. Fernandez will testify that while employed with Muncie, he obtained a patent for a drag brake, which is an integral part of the subject Muncie PTO.

16. Upon information and belief, the drag brake was designed to prevent or mitigate unwanted shaft rotation after the PTO was disengaged. His testimony will clarify the extent to which the drag brake was successful in dealing with unwanted shaft rotation, the amount of torque generated from unwanted shaft rotation, and whether Muncie knew that unwanted shaft rotation could produce serious injury or death to someone caught on an unguarded auxiliary shaft attached to the PTO.

17. It is respectfully submitted that each of the five individuals plaintiff wishes to depose possesses unique and highly relevant information central to plaintiff's claims.

WHEREFORE, plaintiff, David Lent, respectfully requests that the Court grant him leave to take the five additional requested depositions pursuant to Rule 30; together with such other and further relief as this Court may deem just and proper.

DATED: Buffalo, New York
November 13, 2009

s/ Benjamin J. Andrews
Benjamin J. Andrews
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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2009, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECT system, which sent notification of such filing to the following:

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